

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALEXIS DUNLAP, individually and as the
personal representative of the estate of
MiChance Dunlap-Gittens, and FRANK
GITTENS,

Plaintiffs,

v.

KING COUNTY *et al.*

Defendants.

CASE NO. C19-1535-JCC

ORDER

This matter comes before the Court on the parties' stipulated motion for entry of a protective order (Dkt. No. 20). The Court hereby GRANTS the motion and ENTERS the following:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, statutorily protected, or private information, or other material which is exempt from public disclosure or for which special protection may be warranted. This agreement is consistent with Western District of Washington Local Civil Rule 26(c). It does not confer blanket protection on all disclosures or responses to discovery; the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable

1 legal principles; and it does not presumptively entitle parties to file confidential information
2 under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material shall include the following documents, electronically stored
5 information (ESI) and tangible things produced or otherwise exchanged:

- 6 a. Non-public records such as King County employee personnel files, including
7 performance evaluations protected Wash. Rev. Code § 42.56.210;
- 8 b. Non-public records such as King County employee employment applications,
9 protected by Wash. Rev. Code § 42.56.250;
- 10 c. Any other information normally exempt from public disclosure that is relevant to
11 this case (such as personnel records and records containing protected personal
12 information);
- 13 d. The medical records of the deceased, MiChance Dunlap-Gittens;
- 14 e. Juvenile prosecution records, except for information in the publicly available court
15 record;
- 16 f. The names of juveniles as recorded in police reports related to this litigation, except
17 for the name of the deceased, MiChance Dunlap-Gittens, and
- 18 g. Any other material that enjoys special legal protection from disclosure and that is
19 relevant to the claims or defenses in this case.

20 3. SCOPE

21 The protections conferred by this agreement cover not only confidential material (as
22 defined above) but also (1) any information copied or extracted from confidential material; (2)
23 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
24 conversations, or presentations by parties or their counsel that might reveal confidential material.

25 However, the protections conferred by this agreement do not cover information that is in
26 the public domain or becomes part of the public domain through trial or otherwise.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
3 or produced by another party or by a non-party in connection with this case only for prosecuting,
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
5 the categories of persons and under the conditions described in this agreement. Confidential
6 material must be stored and maintained by a receiving party at a location and in a secure manner
7 that ensures that access is limited to the persons authorized under this agreement.

8 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
9 ordered by the Court or permitted in writing by the designating party, a receiving party may
10 disclose any confidential material only to:

11 (a) the receiving party’s counsel of record in this action, as well as employees
12 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

13 (b) the officers, directors, and employees (including in-house counsel) of the
14 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
15 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
16 designated;

17 (c) experts and consultants to whom disclosure is reasonably necessary for
18 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
19 A);

20 (d) the Court, court personnel, and court reporters and their staff;

21 (e) copy or imaging services retained by counsel to assist in the duplication of
22 confidential material, provided that counsel for the party retaining the copy or imaging service
23 instructs the service not to disclose any confidential material to third parties and to immediately
24 return all originals and copies of any confidential material;

25 (f) during their depositions, witnesses in the action to whom disclosure is
26 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”

1 (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. This
2 provision does not apply to police reports used in the depositions of witnesses employed by King
3 County, including the individual defendants. Pages of transcribed deposition testimony or
4 exhibits to depositions that reveal confidential material must be separately bound by the court
5 reporter and may not be disclosed to anyone except as permitted under this agreement; and

6 (g) the author or recipient of a document containing the information or a
7 custodian or other person who otherwise possessed or knew the information.

8 4.3 Filing Confidential Material. Before filing confidential material or discussing or
9 referencing such material in court filings, the filing party shall confer with the designating party,
10 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
11 remove the confidential designation, whether the document can be redacted, or whether a motion
12 to seal or stipulation and proposed order is warranted. During the meet-and-confer process, the
13 designating party must identify the basis for sealing the specific confidential information at issue,
14 and the filing party shall include this basis in its motion to seal, along with any objection to
15 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
16 followed and the standards that will be applied when a party seeks permission from the court to
17 file material under seal. A party who seeks to maintain the confidentiality of its information must
18 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
19 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied,
20 in accordance with the strong presumption of public access to the Court's files.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
23 or non-party that designates information or items for protection under this agreement must take
24 care to limit any such designation to specific material that qualifies under the appropriate
25 standards. The designating party must designate for protection only those parts of material,
26 documents, items, or oral or written communications that qualify, so that other portions of the

1 material, documents, items, or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
5 unnecessarily encumber or delay the case development process or to impose unnecessary
6 expenses and burdens on other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated
8 for protection do not qualify for protection, the designating party must promptly notify all other
9 parties that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
12 ordered, disclosure of discovery material that qualifies for protection under this agreement must
13 be clearly so designated before or when the material is disclosed or produced.

14 (a) Information in documentary form: (*e.g.*, paper or electronic documents
15 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
16 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
17 contains confidential material. If only a portion or portions of the material on a page qualifies for
18 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
19 making appropriate markings in the margins).

20 (b) Testimony given in deposition or in other pretrial proceedings: the parties
21 and any participating non-parties must identify on the record, during the deposition or other
22 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
23 testimony after reviewing the transcript. Any party or non-party may, within 15 days after
24 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
25 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
26 confidential information at trial, the issue should be addressed during the pre-trial conference.

1 (c) Other tangible items: the producing party must affix in a prominent place
2 on the exterior of the container or containers in which the information or item is stored the word
3 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
4 the producing party, to the extent practicable, shall identify the protected portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items does not, standing alone, waive the designating party’s
7 right to secure protection under this agreement for such material. Upon timely correction of a
8 designation, the receiving party must make reasonable efforts to ensure that the material is
9 treated in accordance with the provisions of this agreement.

10 5.4 Names of Juveniles in Police Reports: The names of many juvenile witnesses or
11 suspects, other than the deceased, have been routinely redacted from public disclosure responses
12 related to this matter. In the interests of transparency, the parties will not be redacting juvenile
13 names from police reports or similar documents exchanged in discovery, but understand that
14 such names enjoy the CONFIDENTIAL designation by default, until the parties agree otherwise
15 or the Court so rules. The parties further agree that the use of initials, in lieu of full names, in a
16 public filing does not violate the terms of this agreement.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
19 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
20 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
21 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
22 challenge a confidentiality designation by electing not to mount a challenge promptly after the
23 original designation is disclosed.

24 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
25 regarding confidential designations without court involvement. Any motion regarding
26 confidential designations or for a protective order must include a certification, in the motion or in

1 a declaration or affidavit, that the movant has engaged in a good faith meet-and-confer
2 conference with other affected parties in an effort to resolve the dispute without court action. The
3 certification must list the date, manner, and participants to the conference. A good faith effort to
4 confer requires a face-to-face meeting or a telephone conference.

5 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
6 intervention, the designating party may file and serve a motion to retain confidentiality under
7 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
8 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
9 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
10 other parties) may expose the challenging party to sanctions. All parties shall continue to
11 maintain the material in question as confidential until the Court rules on the challenge.

12 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
13 LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation that compels
15 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
16 party must:

17 (a) promptly notify the designating party in writing and include a copy of the
18 subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to
20 issue in the other litigation that some or all of the material covered by the subpoena or order is
21 subject to this agreement. Such notification shall include a copy of this agreement; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued
23 by the designating party whose confidential material may be affected.

24 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
26 material to any person or in any circumstance not authorized under this agreement, the receiving

1 party must immediately (a) notify in writing the designating party of the unauthorized
2 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
3 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
4 this agreement, and (d) request that such person or persons execute the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A).

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
7 MATERIAL

8 When a producing party gives notice to receiving parties that certain inadvertently
9 produced material is subject to a credible claim of privilege or other protection, the party shall
10 promptly return the document in accordance with the parties’ stipulated Federal Rule of Evid
11 502(d) order.

12 10. NON-TERMINATION AND DESTRUCTION OF DOCUMENTS

13 Within 60 days after the termination of this action, including all appeals, each receiving
14 party must destroy all confidential material received from the producing party, including all
15 copies, extracts and summaries thereof.

16 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
17 documents filed with the Court; trial, deposition, and hearing transcripts; correspondence;
18 deposition and trial exhibits; expert reports; attorney work product; and consultant and expert
19 work product, even if such materials contain confidential material.

20 Any party may request that another party confirm in writing that they have complied with
21 this provision, 60 days or more after the termination of this action.

22 The confidentiality obligations imposed by this agreement shall remain in effect until a
23 designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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3 DATED: December 5th, 2019

4 *s/Patricia Bosmans*

PATRICIA BOSMANS, WSBA #9148
Attorney for Alexis Dunlap and the Estate of
MiChance Dunlap-Gittens

7 *s/Tiffany Cartwright*

8 TIFFANY CARTWRIGHT, WSBA #43564
TIMOTHY K. FORD, WSBA #5986 Attorneys for
Alexis Dunlap and the Estate of MiChance
Dunlap-Gittens

11 *s/David Owens*

12 DAVID B. OWENS, WSBA #53856
Attorney for Alexis Dunlap and the Estate of
MiChance Dunlap-Gittens

14 *s/James Bible*

JAMES BIBLE, WSBA #33985
Attorney for Plaintiff Frank Gittens

17 *s/Endel Kolde*

18 ENDEL KOLDE, WSBA #25155
AMY E. MONTGOMERY, WSBA #32068
Attorneys for King County Defendants

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1 In accordance with the parties' stipulation, IT IS SO ORDERED.

2 DATED this 10th day of December 2019.

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6 John C. Coughenour
7 UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, the undersigned, hereby acknowledge that I have received and read a copy of the Stipulated Protective Order (“Order”) entered in *Dunlap v. King County*, C19-1535-JCC (W.D. Wash. 2019); that I understand the provisions in the Order; that I agree to be bound by all provisions of the Order; that I submit to the jurisdiction of the Court for the purpose of enforcing the Order; and that I understand that sanctions may be imposed by the Court, including an order of contempt, if I fail to abide by and comply with all the terms, conditions, and restrictions imposed by the Order.

Date: _____

Signature: _____

Printed name: _____